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30 Dec. 1899

ADDENDA

TO THE

METHODS OF PUBLISHING,

BY

G. HERBERT THRING, B.A.,

SECRETARY OF THE INCORPORATED SOCIETY OF AUTHORS.

LONDON:

Published for the Incorporated Society of Authors.

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PREFACE.

The Committee have thought fit to print as Addenda to "The Methods of Publishing" some facts collected by the Secretary during the past years. These were printed first in the *Author*, but are here produced in more permanent form, as "The Methods of Publishing" cannot be considered complete at the present time until these further statements have been added. It will be found that the Addenda deal with fresh methods of agreement that have come into vogue since "The Methods of Publishing" was first produced.

ADDENDA.

I.

Matters for Consideration.

For many years past it has been the habit for publishers to draw up the agreements between themselves and the authors. As nearly all the printed agreements have been prepared from the point of view of the former, it is a matter of considerable importance to put before the author the ways and means to protect his own property in these agreements.

The first thing to consider is, what rights of an author are these agreements to cover? The author's rights consist of first, book rights (under which head are included translation

rights); and, secondly, serial rights. In the dealings between author and publisher, the book rights alone are generally involved. These rights, then, must be protected. It is, first, clearly necessary to show the author how he can deal with these rights; and, secondly, to put forward fully the nature of such rights.

The book rights may be dealt with in four different ways:—

1. By an agreement for sale outright, which system will convey the copyright, and thus include the serial rights. (N.B.—This is the only form which will cover the serial rights by implication.)

2. By an agreement for sale on commission. Under this method the author pays for the cost of production.

3. By an agreement for profit-sharing. On this basis the most usual agreement is a half share of profits.

4. By an agreement for payment by royalty. By which is meant a payment of a certain percentage on the *published*, or advertised, price of each book sold.

All other agreements that have come to the notice of the Society do not differ from these forms, except in combining the principles of two or more of these agreements into one. Generally such combination is to the disadvantage of the author. (See "Methods of Publishing.")

In considering the nature of the author's book rights, as dealt with here, it will not be necessary to discuss the question of the nature of copyright, for, with the exception of Method No. 1, the copyright is always, and ought always to be, retained by the author. It is sufficient to state that in Method No. 1 the author gives up all his property, without limit or restriction, in consideration of a lump sum as an equivalent.

The book rights, then, comprise the following sub-divisions and limitations:

(I.)—Sub-Division by Country.—It is possible, and often necessary, to divide the rights of publishing thus, to (1) Great

Britain; (2) America; (3) the Colonies and Dependencies of Great Britain; (4) each Colony separately; (5) the Continent; (6) the United States, &c. In addition, under this heading, should be included the rights of translation into different languages, and in consequence the publication in translation form in different countries.

(II.)—LIMITATION BY TIME OR EDITION.—It is possible to limit the right of publishing, first, to a certain number of years, or, second, to a certain number of editions. The first should, as a general rule, be avoided, as it enables the publishers of the book, if still selling towards the end of the term, to print more than they can sell within the period, and therefore to go on selling the book after the limit assigned. It thus practically prevents the author from transferring his rights except at a heavy pecuniary loss; for it has been decided in the courts that a publisher with a time limit has a right to continue selling the stock in hand at the expiration of such limit, but not the right of reprinting. A time limit is, however, of considerable advantage to the author in case he should be desirous of collecting his works into the hands of one publisher, or of otherwise reconsidering his position.

If, therefore, the author should be desirous of placing a time limit in his agreement, he must be careful by a suitable clause to protect himself from the danger pointed out above.

The second is absolutely essential in educational, technical, scientific, and other works of similar nature that require, through change of ideas and discoveries, to be brought up to date periodically. The author should be able to renew the control of his work.

(III.)—LIMITATION BY FORM OF PUBLICATION.—This is *quâ* works of fiction published in England, limitation to the three volume, 6s., 3s. 6d., &c., forms. (Other countries have also recognised forms, America has 1½ dollar, &c.), *quâ*, other books to the various prices common to the trade.

It should be remarked that all the sub-divisions in No. 1 are capable of the limitations 2, 3, and *vice versa*, all the limitations under 2 and 3 are capable of sub-divisions in No. 1. Thus the book rights are capable of being divided into a great number of minor rights, though in matter of practice they are generally only divided into the following: (1) Great Britain; (2) the Colonies and Dependencies; (3) the United States; (4) the Continental (Tauchnitz); (5) Translation Rights; (6) Limitation by Editions; (7) Limitation by Form.

The author has now before him the nature of his book rights, and he must be sure before signing an agreement that he is quite clear that the portion of those rights he is giving away coincides with those rights that he desires to transfer.

Forms of Agreement.

It will be necessary to give a few general notes and hints on the diverse methods of dealing with book rights.

This article will not trespass on the ground covered by the "Methods of Publishing," which treats of the subject in detail, but will merely give a cursory view of the systems to be avoided, and will, when necessary, refer to the above mentioned book.

In pointing out methods and clauses to be accepted with caution, it does not follow that agreements containing none of those here referred to are therefore perfect. Faults of commission are so much more easily discovered than faults of omission.

Before entering further on the question of these agreements, an author should clearly understand that *the assignment of the right of publishing, even if it continues so long as the legal term of copyright is not an assignment of copyright.* The verbal distinction may be slight, but the legal distinction is large. The contract for publication is a personal contract. To give one of many differences, in a bankruptcy, if a publisher held the right to publish, the contract would terminate, if he held

the copyright the book would become an asset of the bankrupt estate.

1. The sale of copyright is very much to be condemned, and it is only admissible in the case of "sale outright"—a method of publishing, not uncommon, which must be adopted with great hesitation and only with the advice of experienced persons. Some writers, however, hold that the best method of publishing is to sell the literary estate outright, *making sure that the price given is such as to cover all reasonable chances of success.* If an author desires to capitalise his rights, let him do so only after ascertaining, as carefully as possible, what those rights mean.

It should be incidentally mentioned that it is practically useless, from a pecuniary point of view, to publish any work of fiction on commission, and indeed to pay anything towards the production of this kind of literature. But commission agreements are not only useful, but sometimes essential, for books of a technical nature; and in the case of these books, if the system is carefully managed, the result to the author in the end is perhaps more satisfactory than any other form of publication.

2. In publishing on commission the author should take care before entering into the contract—

1. That the cost of production is only that which will be actually incurred.

2. That he can prevent charges for advertising where no money is paid.

3. That he can keep control of the advertising, the amount to be expended and the papers chosen for the advertisements.

4. That he can check the charges made for corrections.

(For further details see "Methods of Publishing," p. 63.)

It may be of use, however, to print a letter of agreement, which came before the Society, and can be ranked under this head.

A Proposed Agreement.

"Dear Sir,—I have made a calculation respecting your MS., and shall be willing to publish it on the following arrangement in two volumes:

"I will take the entire responsibility of its production, and the working expenses upon myself, including advertisement, if you will arrange to be responsible for 250 copies at the trade price of 12s. 6d., or whatever number of copies is needed to bring the sale up to the quantity, if it has not been reached six months after the date of publication, the published price being 21s. Thus, if we are unfortunate enough to sell only 150 copies, I should ask you to take 100 at the price named. If we reach the 250, you will not be troubled any further concerning payment. The plan is one that I have frequently worked upon, and is an equitable one, as the author is not responsible for the initial expenses of production, advertising, reviewing, &c., and all sales during the time specified go to the reduction of his liability, and, if the work is fairly successful, it is published without expense to the author.

"If this proposal meets with your approval, kindly let me hear from you,

"Yours faithfully,

"X."

The preceding letter is not a letter written specially for one case, but is a formula. Others almost exactly the same have been before the Society from the same publishers again and again.

Let us consider exactly what this means. The author is invited to guarantee 250 copies of the book at 12s. 6d. each. That is to say, the author guarantees a sale amounting to £156 5s., so that the publisher on these figures is certain—the book being one of average length for such a price—of a good profit in any event.

By this means, too, the author's and publisher's interests are

at opposite poles. It is the publisher's interest for the first six months not to push the book, so that he may obtain all the author's cash as under the agreement, and subsequently to push the book that he may obtain all the profit.

If the book proves worthless—it will be observed that nothing is said about the merits of the case—it is certain not to reach the sale of 250. But suppose the book turns out to be good, and to have a sale of 1000, 2,000, anything, what then becomes of the profits? It does not appear from the letter that the author is to have any share at all in them. But, perhaps, there was to be a subsequent letter providing for the division of profits. As far as the letter goes, if the sale reaches or exceeds 250 copies, the author neither makes nor loses any money. If it falls short, he pays the difference.

In some cases the publisher has been requested to state what share of profits the author is to have; a letter comes back, again a formula, that he will pay 10 per cent, after the sale of the first edition. No mention is, however, made of the number of the edition, and 10 per cent. is an absolutely ridiculous royalty when the author actually guarantees the cost of production.

3. The third method is that of profit sharing. This method cannot be too strongly condemned on account of the complicated statement of accounts which is generally rendered. To an ordinary individual, publishers' accounts are most difficult to understand, and in some cases are intentionally made so. (See "Methods of Publishing," page 29, half profit system; page 75, advertisements; page 83, author's corrections.)

Even when the *bona fides* on both sides is indisputable, cases of difference of opinion are likely to occur. Either the book is over advertised, or advertised in the wrong papers, and therefore the profits are reduced; or the book is under-advertised and the sales thereby curtailed.

Again, the amount charged for corrections, which it is almost impossible to check, may lead to a feeling of distrust, where

especially (for a profit-sharing arrangement is a *quasi*-partnership) there should be confidence.

The writer of technical books of all sorts should beware of this form of agreement, as publishers often put forward this method of publishing as equitable where there is some risk of the sales not covering the cost of production, or of the book going slowly.

If, however, the author desires to publish under this system he should obtain before entering into an agreement an estimate of the cost of production from the publisher. To this he should add the sum to be agreed upon in advertising, over which he should retain some control, and an approximate amount for author's corrections. After reckoning the total that would arise from a reasonable sale of the work, he should see whether there could be any profit left to be divided.

The words "incidental expenses" are often inserted in a half-profit agreement, referring to the cost of production. This term is very unsatisfactory, and should if possible be struck out. As, however, some publishers will not enter into an agreement on this basis without demanding some deduction for office rent, expenses, &c (the charge of "office expenses" has been frequently combatted in the *Author* as wholly untenable), it may sometimes be found policy to yield on this point. In such a case the difficulty ought to be met by some fixed sum, say 5 per cent. on the cost of production of the book. This, though the best attainable clause, is still unsatisfactory, as it contravenes the great basis of all agreements between the author and the publisher, namely, that their interests should be in common. Office expenses, of course, if they are considered by one of the three persons concerned with the sale of a book, should be considered by all.

4. The fourth method is that of royalty. This is the simplest and most convenient form of agreement, the accounts are clear and easily understood, and to check them involves but little labour.

THE SYSTEM OF DEFERRED ROYALTY.

1. After cost of production has been covered.

2. After the sale of a certain number of copies

are dealt with in "Methods of Publishing," pp. 48 to 62.

Here it need only be said that the first of these methods is absolutely inadmissible as involving all the objections of the profit-sharing arrangement, and that the second is only admissible if the royalty is proportionately increased after the sale of the stated number, and if the author is sure that the publishers stipulate to print a larger number than the number stated on which no royalty is paid.

Now that some stand has been made to sell books at a net figure, authors should be careful that their royalty is paid on the published price, and that the book is not going to be sold NET. Fifteen per cent. on the published price of an ordinary six-shilling book is equivalent to 18 per cent. on a net book of 5s.

Every author who cannot command the highest scale, should, however small the royalty offered him, stipulate for an increase with increased sales.

The system of a royalty increasing with the sales is equitable to both parties, and the author thereby avoids being dependent on the "generosity" of the publisher if the sales are large. There are no doubt some royalties which cannot be increased, or in other words some authors, on account of their popularity, can demand the highest royalty from the beginning.

An example of an increasing royalty would be, say, 10 per cent. of the published price on the sale of the first 500 copies, 15 per cent. up to 1,000, 17½ after the sale of 1,000, &c., &c.

This form of payment is very convenient for educational works. It may be doubtful whether an educational book will be taken up by the educational centres—if it should fail to be accepted the book can only stand a small royalty. Should the work, however, meet with the approval of teachers, it will sell

in its thousands, and the returns will be great. *A successful educational work, for instance, has a far greater circulation than any popular novel.*

As agreements have been from time to time offered where the royalty decreases with the increased circulation, it is only necessary after the former statement to mention that such an arrangement is worse than absurd.

If the book is a prize book in the book lottery, the author with a rising royalty will reap a proportionate return, and no publisher who is desirous of dealing fairly with authors will object, when the book is selling in its thousands, to paying the author accordingly, but it must be under agreement.

Agreements.

It has been thought advisable to print one or two forms of agreement in full, so as to show what are the clauses disadvantageous to the author.

A publisher is certainly within his rights in making any stipulations and terms he pleases. It is for the author, before acceptance, to ascertain what they mean. The following is a *verbatim* copy of a printed agreement.

"Memorandum of Agreement made this day of , 189 , between (hereinafter called 'the author,') for himself, his executors, administrators, and assigns, of the one part, and (hereinafter called the 'publishers,') for themselves, their executors, administrators, and assigns of the other part. Whereas the author is the proprietor of copyright in a work at present entitled , which he has requested the publishers to publish on the terms and conditions hereinafter appearing. It is hereby agreed between the author and the publisher, as follows:—

"1. That, subject to the hereinafter payments, the author hereby assigns to the publishers the exclusive right of printing and publishing the above work in serial and book form in Great

Britain, its Colonies and dependencies, in the United States of America, and in English on the Continent of Europe, and in all other countries, unless, and until rights are assigned as in clause 7 thereof.

"2. That all details as to the time and manner of production, publication, and advertisement, and the number and destination of free copies, shall be left to the sole discretion of the publishers, who shall bear all expenses of production, publication, and advertisement, except the amount, if any, by which the cost of corrections of proofs, other than printers' errors, as per printers' invoice, exceeds an average of 5s. per sheet of sixteen pages of printed matter, which amount shall be borne by the author.

"3. That the published price of the first edition shall on publication be (say 6s.) per copy, but the publishers shall have power in their discretion to *alter* the published price of any editions as they may think fit, and sell the residue of any edition at a reduced price or as a remainder.

"4. That the publishers shall deliver to the author, on the 29th day of September of each year, a statement of the number of copies sold, whether singly, or in editions or remainders, and whether in the British Dominions or elsewhere during the year before the preceding 30th day of March, with the price or prices at which such copies were sold.

"5. That the publishers shall, at the time of delivery of said statement, pay to the author on all such copies sold after 1,000 at above half their published price, a royalty of on their published price, and on all such copies at or below half their published price, a royalty of per cent. on the net receipts of such sales; and on all copies sold as remainders, that is, below one quarter of the published price, the royalties shall be per cent. on the net receipts of such sales. In calculating such royalties thirteen copies shall be reckoned as twelve, and no royalties shall be paid upon any copies presented to the author, or others, or to the Press, or upon copies destroyed by fire. The

publishers shall pay to the author on publication the sum of £ in the place of royalty on the first 1,000 copies sold.

"6. That should the publishers issue a special edition for sale in the British Colonies and dependencies only, they shall pay to the author, on all copies of such sold, a royalty of — per cent. on the net receipts of such sales, payable as and when provided in clause 5 hereof.

"7. That the publishers shall have the sole right to sell or assign the Serial, American, Colonial, Continental, Translation, and Dramatic rights in the above work, and the publishers shall pay to the author one-half of the profits from the sale of the same, such accounts to be payable as and when provided in clause 5 hereof. In the case of stereo-plates, electro-plates, or shells with rights being sold, the net profits of their sales, after deducting the invoiced cost of their production, shall be received, divided, and paid over in the same way.

"8. That the publishers give no guarantee of securing the copyright outside of the United Kingdom, and do not bind themselves to issue special Colonial or Continental editions, or to sell serial, translation, or dramatic rights.

"9. That the author shall be entitled to receive on publication — presentation copies of the first edition of the work, and shall have the right to purchase further copies for personal use at half the published price, net.

"10. That when any edition of the said work has been sold out the publishers shall not be bound to reprint it; but if the publishers shall not within one month after receiving a written request from the author decide to publish a further edition, the author shall be at liberty to make such arrangements as he thinks fit for the publication of any further editions, provided he takes over the moulds, stereo or electro plates, or other similar plant used for the above work, at their net cost as per invoice.

"11. That the author guarantees to the publishers that the said work is in no way whatsoever a violation of any copyright

belonging to any other party, and that it contains nothing of an objectionable or libellous character, and that he and his legal representatives shall and will hold harmless the publishers from all suits, and all manner of claims and proceedings which may be taken on the ground that the said work is such violation, or contains anything objectionable or libellous. The author undertakes to execute on the request of the publishers any document or documents to confirm the transfer of any of the rights defined in the clauses 1 to 7 hereof, and to take all proceedings necessary to enforce his copyright in the British dominions, and elsewhere, on receiving a suitable indemnity against costs (if any). The author shall allow his name to be used in all such proceedings, and in all formalities necessary for registration of copyright."

Comments on the Agreement.

Take first the statement of the parties to the agreement and the recital. It is a great mistake to contract with the executors, administrators, and assigns of a publisher. Publishing is a personal contract. This has been decided in the courts, and this position ought to be maintained. It is of the utmost importance to an author that the contract should not be assigned, and that in case of bankruptcy or death he should again have the right of choosing his publisher. The recital also is amusing, "a work which he (the author) has requested his publishers to publish on the terms and conditions hereinafter appearing." Did he make the request joined with these terms and conditions? He could hardly have been so foolish, he knew nothing of these terms and conditions until they were thrust down his throat.

Clause 1. Under this clause the publishers ask for all the book rights, all over the world, which is a great deal, but that is not all. They also ask for the serial rights all over the world. In addition to being publishers, then, they are thus at liberty to act as authors' agents and syndicaters. The remuneration they ask for this will be considered below. There are a few rights

still left to the author, and these it will be seen are secured under clause 7 to the publishers. Under this clause the author assigns nearly all his rights. Do the publishers undertake to do anything? Certainly not. In clause 8 this will be further explained. They do not even undertake to publish an English edition, but have only bound the author to assign them the right to publish.

Clause 2. If they had undertaken the publication of an English edition, they have not bound themselves to time. This is extremely important. They might wait until they got rid of all the serial rights in England and America, or, if the author was unknown, until he made his name and thus they would get an enhanced sale at low terms, or, lastly, if the book was an educational or other technical work, they might keep an author in check while they ran a more successful man and thus hold control of the market. The manner of production, publication, and advertisement is left to the publishers. This, if read with other clauses, might be fair. The unfairness, appears, however, as the reader proceeds, and will be explained.

Corrections.—The amount to be borne by the author for corrections (*i.e.*, beyond 5s. per sheet of sixteen pages) is considerably larger than is ordinarily charged; 10s. and 15s. per sheet of sixteen pages is the more common arrangement. In any case, the clause is badly drawn, because it does not explain what is the meaning of 5s. a sheet. What is the connection of shillings and corrections?

Clause 3. The manner of publication was left in the hands of the publishers. This would be correct if it was subsequently agreed and the author knew that an edition was to be produced at a certain price. But this is not the case. The publishers can alter the published price and, take note, "can sell the residue of any edition at a reduced price or as a remainder." No one objects to a *bonâ fide* remainder sale at the right time, but here the publisher can at any time sell at a reduced price.

This right is most dangerous when read in conjunction with Clause 5.

Clause 4 is a distinctly bad clause, as by this arrangement the publisher may retain the author's money for the benefit of his own business for over a year. The accounts are made up annually and delivered six months afterwards, when payment is made. It is possible, if the book, say, is produced in April, and the largest sales takes place during April and May, that the author's money will lie with the publisher until September year, nearly fifteen months.

Clause 5 refers to the work evidently of a young author, but it is the form of the clause more than the payment after 1,000 copies that is so objectionable. It must be remembered here especially that under clauses 2 and 3 the manner of publication and price of the work were left to the discretion of the publishers. If they therefore publish, and then sell below half price under the agreement, they can pay the author on the net returns instead of on the published price. In fact, cases have been known to occur where the largest sales of the book to the public libraries were made below half price, and accounts rendered accordingly. All that part of the clause which refers to the payment of royalty on copies sold below half price should be rejected. The clause is altogether badly drawn, and should in a proper agreement be remodelled.

Clause 6, as it at present stands, without any price being inserted, is fair. Copies are sold to the Colonies in sheets at cheap rates, and payment is then made by a royalty on the net returns. The ultimate fairness of the agreement depends, of course, upon the amount of royalty.

Clause 7 is another remarkable clause. Under clause 1 it will be remembered that the publishers obtained nearly all the rights the author possessed. Under clause 7 they claim the right to sell and assign the remainder of those rights, and, as they are only acting as agents, it would be thought that they would only

make agency charges, that is, from 10 to 15 per cent. on the returns, but on the contrary they demand 50 *per cent.* Even should the author dramatise his work, and should it be successfully produced at a theatre, he can only do so with the publisher's consent, and then he will have to pay the publishers 50 per cent. on all the returns he gets. Should a foreign author offer him a sum down for the translation, he can only sell with the consent of the publishers, to whom again he must pay half the returns.

Clause 8. It will be remembered that under clauses 1 and 7 the publishers obtain all the rights (with the exception of the bare shell of copyright) that the author had to sell, and it will be also remembered that the publishers did not undertake to publish, or, in fact, do anything. In clause 8 the publishers expressly state that they give no guarantee of securing the copyright out of the United Kingdom, and do not bind themselves to issue special Colonial or continental editions, or to sell serial translations or dramatic rights. Perhaps it would be too much for the author to ask them to guarantee this, but they do not even bind themselves to make the attempt to do their best for the book and author's rights generally.

Clause 9 is, perhaps, the only clause which needs no comment.

Clause 10 only refers, reading it with the agreement on the whole, to the publication of the English editions. All the other rights are still to be retained by the publishers under the agreement, that is, dramatic translations and other important matters of this kind. With regard to the English book rights, it is, perhaps, a reasonable clause if the publisher, on deciding, were also bound to fix a time limit when the new edition should be produced. The author, however, should certainly not bind himself to take over what might be useless stereo-plates and similar plant (the latter appears very indefinite) "at their cost price." If they are taken over it should be at a valuation.

Clause 11. The first part of this clause can be accepted as the ordinary guarantee clause, and the latter part is merely formal, and binds the author to do what he has undertaken.

The financial side of this agreement has been omitted, but if the royalties that were actually proposed and agreed to were inserted, it would have been possible to write two or three more very eloquent and interesting paragraphs on the subject.

There is another practice by which a publisher endeavours to secure the copyright and all other rights belonging to the author.

One of the best known London firms, on an author bringing to them his MS., offered to publish the work for him on a royalty basis. The book was an exceedingly good one, and the royalty was fair as between author and publisher. The author consented to the terms and asked the publisher to embody them in a formal agreement. A few days afterwards he received a printed form of agreement. It is not necessary here to print the whole agreement, but only that part of it which would be likely to ensnare the author :—

"The copyright in this work and translations thereof, including all copyright, foreign, and other rights, under existing or future treaties of conventions with America or other foreign countries, and under the Canadian Copyright Act, 1875, and any other present or future Canadian or Colonial Act, and all rights of translation and reproduction, and all other Imperial, Colonial, and Foreign rights which now, or during the continuance of the legal term of copyright, shall be or shall become appurtenant to the proprietor of the copyright of the work, shall be the property of the said publishers subject to the payment to the said author of a royalty of —— per cent. on the retail price of the first 1500 copies sold, and ——— in the shilling on the retail price of all copies of the English edition sold beyond the first 1500 copies, and one half of any profits that may be realised from the rights of translation and reproduction, or any other Imperial, Colonial, or foreign rights, which now, or during the continuance of the legal term of copyright, shall be or become appurtenant to the proprietor of the copyright of the work, or from the sale of early sheets or

stereotype plates of the said work to the United States or elsewhere.

"Provided that, should it be thought advisable to dispose of copies of the said work, or of the remainder, at a reduced price, either in England or abroad, which is left to the judgment and discretion of the publishers, the royalty to be paid to the said author is to be calculated on the amount of such sales, instead of on the retail price of the book."

The author, on receipt of the agreement, thought, of course, that it embodied the terms which had been previously offered to him, namely, the right of the publisher to publish subject to an agreed royalty, and was about to sign it. He, however, asked the advice of the Society before taking this step, and was at once shown the important difference between the original offer and the agreement. The author thereupon wrote to the publisher, and pointed out the difference. The agreement was promptly altered to conform with the original statement. There is no objection whatever to the publisher stating that he would offer the author the royalty only on his transferring all the copyright and other rights to the firm, but it is not fair business to offer to publish a book on a fixed royalty, and then when sending in the agreement, to ask for the sale of copyright and other rights, points which had never been mentioned in the first instance.

If the author is not full of knowledge as to his legal position, he is led, trusting to the position of the firm, to believe that everything is in order.

Another Form of Agreement, or Proposed Agreement.

The publishers advertise in a paper, the author answers the advertisement, and forwards his MS. A letter is then received from the publishers to the following effect:

"Dear Sir,—We have much pleasure in informing you that, our reader having reported so far favourably on your work,

and considering the promise in it, we are prepared to undertake its publication on the following favourable terms viz. : "—

The "viz." comprises payment by the author of varying sums, and for such payment the publishers undertake to print an edition of, say, 750 copies.

The author to have two-thirds (generally underlined) of the profits.

The publishers are also anxious to obtain the book on account of the near approach of the publishing season. There is a perennial publishing season, according to the varied dates on the letters (all formulas) which they issue.

The author repudiates the payment, and in return receives another letter from the publishers, who will take a less sum and take a moiety of the profits.

An agreement is then forwarded to the author, and in this agreement (supposed to embody the terms of the previous contract) the greatest care is bestowed to preserve the publishers' legal position, while they accomplish their own ends.

"The publishers agree to *meet the demand for an edition of* 750 *copies*, to be followed, should the demand warrant, by further editions."

The author signs the agreement, and thinks that the money he has paid is going to produce an edition of 750 copies. (The sum asked in most cases will pay for an edition of 750 copies, and put a few pounds into the publisher's pocket.)

It is absurd that when the author pays the greatest part of the cost of production that he should be allowed only half, sometimes only one-third, of the profits.

The publishers, however, do not "give themselves away" readily. They are not obliged to produce 750 copies, but to meet the demand they may, if they please, produce no more than 250 copies, bind 100, and distribute the type.

They have done their duty, and pocketed a nice little sum, for they know very well that the demand will never reach the 250 copies.

If the author was rich, he could always circumvent this clause, by ordering, through agents, up to the 750 copies. He would then have a case against the publishers. But, alas! authors are nearly always poor.

There is another clause of much interest in this agreement. It runs as follows:—

"The publishers shall, within thirty days after the 31st day of December and the 30th day of June in every year, deliver to the author an account showing the number of copies of the work sold from the date of the publication thereof, or during the then preceding half year, as the case may be, and of the moneys received in respect of such sales, and shall, after deducting from the proceeds of the sale of the work any expenses which may have been incurred in advertising thereof, forthwith pay to the author two-thirds or one-half (as the case may be) of such moneys, and shall retain the remaining one-third or one-half for their own use and benefit."

To the uninitiated this clause looks quite straightforward and honest. The usual account clause. But mark what follows: The first accounts are sent in showing a deficit, and a further sum payable to the publishers for author's corrections (a generally unverifiable item), and for advertising. The author demurs to the payment, and is then anxious to know how his money has been expended: have the books agreed upon been really produced? &c., &c.

The publishers then reply, "We are bound to furnish you with accounts under the agreement. We have fulfilled the agreement. We are not bound to do more." On the author referring to his agreement, he generally finds that he is barred by the "consideration clause" from inquiring how his money has been spent.

Clauses to be Avoided.

A clause in which a royalty is paid on the "selling price," or the "nominal selling price," should be altered, and the royalty should be made payable on "the published price." The former terms are ambiguous, the latter is indisputable.

Contract with a Limited Liability Company.

If a private firm is turned into a limited liability company it appears probable that a contract to publish can be determined even although the former partners are directors, and that, as the contract is a personal one, the firm cannot without the sanction of the author transfer to the company, but there is no doubt that where the business is virtually in the same hands, very little evidence would be necessary to show acquiescence in the new order of things on the part of the author.

If a limited company goes bankrupt, the contract to publish is terminated, but if the trustee in bankruptcy carries on the business, the point is rather more difficult.

It is probable that the receiver, or the trustee, may sell the stock in hand, but cannot reprint the work.

No contract should ever be made with a publisher, his executors, administrators, and assigns.

A contract to publish is a personal contract, and should always be kept so.

This is a question of great import to authors.

Royalty Clause.

"Messrs. . . . to render a royalty statement to the author half-yearly, viz., to June 30 and December 31, and it is understood that in making up such royalties thirteen copies shall be reckoned as twelve."

Royalties should be paid on every copy sold. This is the custom of the principal publishing houses. Thirteen copies should not, therefore, be reckoned as twelve.

The publisher's argument for paying on thirteen copies as twelve is generally that he has to sell to the booksellers thirteen as twelve. This, however, will not hold good for two most trenchant reasons: firstly, that the royalties on p. 60 of "The Methods of Publishing" have been reckoned as paid on every copy. It having been already calculated in the "Cost of Production," on which these royalties are based, that the publisher has sold to the booksellers thirteen as twelve, so that, if the royalties are paid thirteen as twelve in addition, then the calculations on p. 60 of "The Methods of Publishing" show false returns. The second reason is that booksellers do not buy thirteen as twelve, except when purchasing in large quantities. The majority of booksellers in England, owing to lack of capital behind them, very seldom purchase thirteen as twelve. If publishers insist upon inserting in the agreement that royalties should be paid thirteen as twelve, then the following little sum must be taken into consideration by all authors. The question is a matter of vital importance as touching very nearly the author's income.

By the aid of mathematics, the different results can be expressed with absolute precision.

Thus, algebraically:—Let a be the price, in shillings, at which a book is sold, and b the royalty per cent. which the publisher agrees to pay the author.

Then, author's royalty on each copy $= \frac{a\ b}{100}$ shillings.

And author's royalty on 100 copies $= a\ b$ shilling,

Thus, for example: If a book is sold at 6s., and the author's royalty is 10 per cent.,

Author's royalty on each copy $\frac{a\ b}{100} = \frac{6 \times 10}{100} = \frac{3}{5}$ of a shilling; or, $7\frac{1}{5}$d.

Author's royalty on 100 copies $= a\ b = 60$ shillings.

In the above cases the author receives his royalty *on every copy*. If, however, the publisher inserts in his agreement a clause that royalties are to be paid "counting thirteen copies as twelve," the author then receives royalties on twelve copies only out of every thirteen sold; or, which is the same thing, *loses* his royalty on every thirteenth copy; or, which is again the same thing, receives only $\frac{12}{13}$ of what he would have received if the royalty had been paid upon every copy.

Algebraically the result may be expressed thus: if, as before, a be the price, in shillings, at which the book is sold, and b the royalty per cent. (thirteen copies being counted as twelve),

Author's royalty on each copy $= \frac{12\,a\,b}{1300}$ shillings.

Author's royalty on 100 copies $= \frac{12\,a\,b}{13}$ shillings.

For example, taking again the above case of a book sold at 6s., and the author's royalty at 10 per cent. (thirteen copies counted as twelve),

Author's royalty on each copy $= \frac{12 \times 6 \times 10}{1300} = \frac{72}{130}$ $= \cdot55384\ldots$ of a shilling: a little more than $6\frac{1}{2}$d. (Author's exact loss on each copy is $7\cdot2 - 6\cdot64608\ldots = \cdot55392\ldots$ of a penny, or a little more than a halfpenny.

Author's royalties on 100 copies $= \frac{12 \times 6 \times 10}{13} = \frac{720}{13}$ $= 55\cdot38461\ldots$ shillings; a little more than 55s. $4\frac{1}{2}$d.

The calculations for any price, royalty, or number of copies can be easily made: so that the subject need not be here pursued any further: but it is interesting to compare the actual *results* of the two systems, of royalty on every copy, or when thirteen are counted as twelve. Again the case is taken of a book

which is sold at 6s.; with royalties of 5, 10, or 15 per cent. The author's royalties on 100 copies are:

	5 per cent.			10 per cent.			15 per cent.		
	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
12 as 12:	1	10	0	3	0	0	4	10	0
13 as 12:	1	7	$8\frac{1}{4}$	2	15	$4\frac{1}{2}$	4	3	$0\frac{3}{4}$
Author's loss:	0	2	$3\frac{3}{4}$	0	4	$7\frac{1}{2}$	0	6	$11\frac{1}{4}$

A problem of some interest now naturally suggests itself. If the publisher insists upon counting thirteen as twelve, what higher royalty ought the author to demand so as not to lose by the thirteenth copy?

Let a = the price, in shillings, at which the book is sold.

b = the royalty proposed by the publisher; with which the author would be contented, *if it were paid upon every copy.*

x = the royalty author must demand, so that when it is paid upon "thirteen counted as twelve" he may receive as much as if b had been paid upon every copy.

Then, from what has been said above, we have:

$$\frac{12\,a\,x}{1300} = \frac{a\,b}{100}$$

$$\frac{12\,x}{13} = b$$

$$x = \frac{13\,b}{12}$$

The author must demand a royalty increased in the proportion of 13 : 12; or, in other words, he must demand 1s. 1d. in the

place of every 1s. of the royalty expressed by *b*. So he will ask for 13 per cent. in the place of 12 per cent; or 6½ per cent. in the place of 6 per cent.

In conclusion, when "13 are counted as 12," the author loses 7·69..., or rather more than 7½ per cent.

Account Clauses.

"Accounts shall be made up annually as soon after June 30th as practicable, and payment will be due in the January following."

If a book is published early in the autumn, the chief sales occur before Christmas, and the account is rendered in the following June. If the author is paid six months afterwards, the publisher may hold a large part of the author's share in his own hands for nearly twelve months.

The interest on this sum, when the firm is a large one, and makes therefore large payments in the course of the year to authors, must go far to cover office expenses.

Bankruptcy may also occur in so long an interval, and then the author will at most obtain only a dividend on the amount of his demand.

Account Clause (*No.* 2).—"Account of sales of the work to be made annually to June 30, rendered and payable before the end of the year."

This is subject to almost the same remarks as the previous clause.

An author should therefore always try and obtain semi-annual accounts if possible.

Clause binding author to offer future work to a publisher.—"The author shall, during the next five years from the completed serial publication of the present novel or story, give to the said

publisher the offer or refusal of any further novel or story he may write for newspaper publication, at the lowest price the said author will accept for the same from any other person for newspaper publication."

This clause hardly comes under a treatise that deals mainly with book rights, but it gives an opportunity of commenting on a danger formerly common in bookright agreements, which should be avoided, namely, the danger of an author binding himself to a publisher for future work *under any circumstances.*

Clauses Referring to Sale of Copyright.

1. "In consideration of the sum of £ , to be paid as hereinafter provided, the said author agrees to sell and the said publishers agree to purchase the absolute copyright in the said author's original novel called ' .'"

2. "The said author agrees to sell and the said publishers agree to purchase the copyright of his novel, entitled ' ' for the sum of £ payable on publication."

3. "It is agreed that if and when any edition of the said work is issued at any lower price than 6s. the publishers shall have the right and option of buying the copyright free from all royalty for the sum of £50, to be paid to the author within a month from the date of publication of such edition, failing which payment this option shall be no longer in force."

4. "This agreement to be binding for a period of years from the date of publication, after which time, subject to any interest the publishers may then have in the work in respect of unsold copies, the said author shall be at liberty to transfer the book to some other publisher, or to renew the agreement with the said publisher as may be arranged."

5. "It is agreed that the copyright of the said work is to remain the property of the said author, and that at the expiration

of years from the day of , or at the expiration of any subsequent period of years thereafter, this agreement may be terminated by either party on giving three months notice of the intention to do so. In the event of its being terminated by the said author, he shall purchase the plates and stock in hand at the debt that may be against the said book, if such debt is greater than the cost of the paper and print of the stock in hand, or if less at the cost of the paper and print of the stock in hand. But if this agreement be terminated by the said publishers the said author shall have the option of purchasing the stock on the before-mentioned terms but shall not be bound to do so."

6. "Copyright to remain the property of the publishers for the term of years. Accounts to be made up half-yearly to 30th June and 31st December, and settled by the 31st August and 28th February following."

7. "That the copyright and all rights shall remain the property of the said publishers."

The seven clauses printed above refer mainly to the purchase of copyright.

This system has already been criticised, and reference has been made to the "Methods of Publishing."

It can but be repeated that it is contrary to all the author's interests to sell the copyright, or any portion of the copyright, not only when he is effecting a sale outright, but more especially when he reserves any future interest in the sales.

In clause No. 2 the sum is to be paid on the date of publication. It is most important therefore that this date should be approximately fixed, as it might be possible that the publishers either refused to publish or delayed publication. Some reasons that might prompt this action are stated on page 16.

There is no clause more likely than clause 3 to set the publishers and author's interest at variance. The greater part

of the agreement from which it is drawn is an elaborate statement of the royalty to be paid under certain conditions, from which one would naturally infer that the MS. would be as matter of course published at 6s. or over. But, although the author has assigned the right to publish there is no reciprocity on the part of the publisher, he does not undertake to publish the book at all, and there is nothing to prevent him from publishing at 5s. 6d., paying the £50, and securing the whole copyright for that small sum.

Clause 4. The question of the limitation of bookrights, much more therefore copyright, for a number of years has been already referred. It should for legal reasons be avoided, except under the precautions already indicated.

For the same reason clause 5 is objectionable. If the publishers or author terminate the agreement there is the very difficult question of what is to be done with the stock in hand. Such stock is often absolutely useless to the author.

The remarks that have already been made about the sale of copyright apply with equal force to the remaining clauses, which are inserted only because they have been taken from actual agreements.

Clauses for Sale of Outside Rights.

1. "Except as in clause hereof, the copyright, whether English or foreign, in the said work, including the rights of translation and publication of any dramatic version thereof, shall not be sold, assigned, or transferred by the author, either as a whole, or for a limited time, or over a limited space, without the consent of the publisher. That the proceeds of the sale or transfer of copyright, as defined in the above clause, shall be divided in the proportion of one-half to the author and one-half to the publisher."

2. "All amounts received for rights of translation or repro-

duction abroad shall be divided equally between the two parties to this agreement."

3. "Should the work be issued in America, or any other foreign country, that the profits arising from such transactions shall be divided equally between the said author and said publishers."

4. "It is further understood that the said publishers shall endeavour to secure copyright on the said work in the United States of America, and in the event of their succeeding shall pay to the said author two-thirds of all moneys received from the American publisher of the said work. All profits arising from minor rights, such as translations and Continental editions, to be equally divided between author and publishers."

5. "If, in the discretion of the said publishers, it becomes expedient to dispose of an edition of the book at a reduced price for sale in the Australian Colonies, these copies shall not be subject to the payment of any royalty to the said author, but the profit on the transaction shall be divided into two equal portions, one of which shall be the property of the said author, and the other of the said publishers."

6. "And the said publisher shall be entitled to dispose of any other rights (rights of translation, American rights, or such like) in the said work, the said publishers to have 50 per cent. of all profits arising out of the sale, lease, conveyance of such rights, and the said author to receive the remaining 50 per cent. thereof."

7. "The publishers may effect the sale of Continental rights only with the author's consent. The proceeds of such sale, if effected by the publishers, shall be divided in the proportion of three-quarters to the author and one-quarter to the publishers."

Agency work may be understood to mean such work as the publisher tries to accomplish by acting not directly with the

public (for the publisher is in many cases only an agent), but indirectly with the public through another middle man.

A perusal of the above clauses will show that this work covers the placing of American rights, serial rights, Colonial rights, &c.

The sale of "outside rights" is generally placed in the hands of literary agents, as in many cases the author is ignorant of what "outside rights" go to constitute his literary property, and in any case they are difficult to handle, and require the care of a practical business man.

There are literary agents in London who undertake this business on behalf of authors, for a charge of from 5 to 15 per cent.

The question of these agents' charges has been very bitterly discussed by certain publishers, yet these same publishers, when undertaking agency work, take as their recompense anything from 25 to 50 per cent. Take, for example, clause 1, supplementary to which in the same agreement is a clause for the sale of American rights on the same terms. Here the publishers ask 50 per cent., and get as many of the rights as they can from the author. This clause, with the exception of the one quoted at length in an agreement on p. 12, is, perhaps, as strongly in favour of the publishers and to the detriment of the author as it is possible to conceive.

Even if the author acted as his own agent with regard to translation or foreign reproduction, making arrangements without the assistance of the publisher, he still must pay 50 per cent. Further, should he dramatise his work he must pay one half of the proceeds.

Clauses 2, 3, and 4 all show a 50 per cent. payment to the publisher. They are more favourable to the author, however, as they do not include so many rights, and in clause 4 the author is to get two-thirds of the proceeds arising from the sale of the American rights, if the publisher obtains American copyright. Clause 5 still claims 50 per cent. but only refers to Australian rights.

Clause 6 is peculiar in some ways, more especially in its phraseology; "or such like" is indefinite. It is doubtful either whether the author could act at all as his own agent under this clause. The clause, as usual, stipulating for 50 per cent. Clause 7 only affects Continental rights, and the sale must be made only with the author's consent. The author can, if he likes, act as his own agent and make all the profit, but if the publisher does act as agent the charge is 25 per cent.

The rights are more limited and the charge is less, but still enormous when compared with the agent's 10 per cent. It would be easy to quote clauses without end bearing on the same point. In none of the many agreements is the charge below 25 per cent.

On these clauses it can only be added that where the author transfers the copyright the publisher usually deals with all subsidiary rights without reference to the author. He sometimes shares the returns with the author and sometimes does not.

A case has, however, been known in which a publisher bought the copyright from an author, and, on the book being published in England, the author neglected to secure the American rights. There were no rights therefore in America, and the book could have been pirated by anyone.

An American publisher wishing to republish the work, wrote to the English publisher, inferring that he was acting for the author, and stated that he was desirous of publishing the book and of paying an honorarium to do so. The publisher this side, in virtue of his non-existent American rights, took the honorarium to himself.

Here it may be as well to state is another and most important point that the author should be very careful about.

He should not enter into a royalty agreement for the sale of the book in England, and a profit-sharing arrangement with the same publishers for the Colonial or American edition. If he does so he must be sure that it is stated in the profit-sharing

clause that the print and paper alone is to be charged against the Colonial edition.

The composition was necessary for the English issue, and it is on this basis that the amount of royalty is fixed.

If this item or any part of it is to be charged against the Colonial profit-sharing arrangement, then the author ought to obtain a larger royalty on the English sale, as the royalty on the English sale is based on the idea of the whole cost of composition going against the English edition.

Clauses Referring to Remainder Sales.

To those who do not know it may be worth while to point out that *bonâ fide* remainder sales are the sales of a book after the general demand for the book has ceased, and when the book is virtually dead.

The publishers then offer the whole of the stock in hand at cheap rates to a secondhand bookseller or sell it by public auction.

Such sales realise very low prices.

There are instances of remainder sales being arranged when the book is not dead. This course, under some agreements, benefits the publisher but not the author.

The clause referring to remainder sales are very often of an arbitrary character, for example :—

"The publishers shall have the power to sell the residue of any edition at a reduced price or as a remainder."

This clause occurs almost word for word in two separate agreements. It does not give the author any option of purchase, and it gives the publisher the opportunity of clearing his shelves before the *bonâ fide* sales are at an end.

Sometimes there is no clause relating to remainder sales, but this subject is governed by a clause leaving all rights as to the method of publication and sale of the work with the publishers —then the same result occurs.

A practical agreement regarding remainder sales is certainly necessary, and much to be desired.

Correction Clauses.

1. "The said author to correct proof sheets with all reasonable despatch, and if any alterations or additions to proofs are made beyond the usual corrections of printers' errors he is to pay for such extra work."

2. "The cost of correction of other than the printers' errors in the proofs of the said work exceeding ten shillings per sheet of thirty-two pages is to be borne by the said author, and the amount thereof shall be payable to the publishers by the said author within one month after the publication of the said book."

3. "All details as to the time and manner of production, publication, and advertisement, and the number and destination of free copies, shall be left to the sole discretion of the publishers, who shall bear all expenses of production, publication, and advertisement, except the amount (if any) by which the cost of corrections of proofs other than printers' errors at per printers' invoice, exceeds an average of five shillings per sheet of sixteen pages of printed matter, which amount shall be borne by the author."

4. "All alteration in proof sheets made by the author while the book is passing through the press, the cost of which shall exceed sixteen shillings per sheet of sixteen pages shall be at the expense of the author."

5. "That the author shall not be liable for the expenses of author's proof corrections (exclusive of the correction of printers' errors) up to the amount of £5, equivalent to one hundred hours of work, but that should such charges exceed this amount, the author shall be debited with the excess."

Nothing is more likely to lead to disputes between the parties than corrections. A few clauses are printed above, drawn from different agreements. The first three are exceptionally disadvantageous to the author.

The charge varies, but, in the agreements from the better houses, generally lies between 10s. and 16s. per sheet of sixteen pages for corrections *other than printers' errors*.

If the author exceeds this amount he has to pay the excess.

The safest way is for the author to keep duplicate proofs with the corrections carefully copied. This process, though tedious and laborious, is sure, for otherwise the author is absolutely in the hands of the printer.

The next best plan is to insert the time equivalent for the money value into the clause as in clause 5, so that, if the charge appears excessive, it can at once be turned into hours, when it will most likely appear ridiculous. £20 for corrections would mean 400 hours, or the work of one man for forty days at the rate of ten hours a day.

It is useful to remember the rapidity absolutely necessary for proof corrections of daily papers, and then compare the time taken with the £20 charge.

It is almost impossible to really check corrections, as sometimes the insertion of a word will throw the type out for pages.

An author ought to try if possible to insert a phrase or word of similar length to the phrase or word deleted, and ought to try and make full corrections, if any are necessary, when the type is in "slip form," before it is made up into pages.

Other Clauses.

The following clauses are not classified under any particular heading, but as they have been culled from agreements, it is as well for the author to be aware of their existence.

"The publisher is, so far as his charge for composing, stereotyping, printing, binding, supplying paper, and furnishing

copies, whether retail or to the trade, are concerned, to be regarded as principal and not as agent either of the author or of any other person, and as principal he will render an account in writing made up to the usual quarter days on the first day of May, August, November, and February in each year."

This clause has been taken out of a commission agreement, and suggests that the publisher is not anxious to have the accounts between himself and his printer investigated.

It should not be allowed to stand. Every publisher who is desirous of dealing well with authors is only too anxious to give every facility for the investigation of accounts. Is this clause intended to give the publisher an opportunity of making a large secret profit? This must not be assumed. Any honourable publisher would repudiate the suggestion and withdraw the clause.

"The author undertakes to refrain from writing or publishing, or causing, or assisting, or licensing the publication of any other work likely to injure, compete with, or impair the sale of the work during the continuance of this licence, or until the whole of the copies lawfully produced under this licence shall have been disposed of."

No author should allow this clause to remain in his agreement unless the publisher equally binds himself to refrain from publishing. It is a most dangerous clause without reciprocity. To meet the case it might be possible to arrange a time limit, say, of three years to either party. In the first place it would be a foolish action on the part of an author to destroy his own property, and it might be a very profitable thing on the part of a publisher to obtain the control over a similar work, and thus stop the competition of other publishers, and hold the command of the market on a given subject.

This refers to the publishing of educational, scientific, technical, &c., books, and it is in agreements for the production of these books that the above clause is generally inserted.

"The author shall guarantee that there is copyright in the said work in the United Kingdom, and that he is the proprietor thereof, and that should the publication of the said book subject the publishers to any legal proceedings, civil or criminal, in the United Kingdom, he shall indemnify the publishers from all cost and liability whatsoever which the publisher may incur in connection with such legal proceedings."

It is sometimes necessary and often reasonable to give the publisher an indemnity clause against actions for infringement of copyright or libel. But it is hardly fair to ask the author to indemnify the publisher from "any legal proceedings connected with the publication of the book." He might have a dispute with the printer, with the binder, &c., for which the author could hardly be responsible.

"That in the event of the sale exceeding the said copies the publisher shall bear the cost of any subsequent editions or edition, and shall allow the said author a royalty of pence per shilling on the published price."

This is a case of deferred royalty. If any author is compelled to accept such an agreement he should endeavour to ascertain whether the work is likely to reach the amount named, and to protect himself from the publisher refusing to let it reach the amount by binding the publisher to produce a specified number of copies.

In a profit-sharing agreement a clause to the effect that "advertisements appearing in the publishers' own organs shall be charged for at half the usual tariff"—must be struck out.

It costs the publishers nothing beyond the setting up of the type and an infinitesimal amount for paper, and it is unfair in a case of *quasi*-partnership that the one partner should benefit at the expense of the other, for in such an agreement, if the author has not in addition a tight hand over the advertisements, a considerable amount of profits may be sunk.

Monthly periodicals are not good advertising mediums.

The above clause is no doubt put forward as a sop to the author, but it must not be allowed to stand. It is unfair for one partner to make this profit and not the other. In addition it should be pointed out this clause does not cover *exchange advertisements in other periodicals*—another method by which the publisher obtains an advantage and the author does not. In other words, such a clause gives the publisher the absolute rights of swamping the whole profits of a book by advertising in his own organs.

SERIAL PUBLICATION.

It may be as well to add a few words on serial publication, by which is meant not publication in a series of books, but publication in the form of periodical issue.

Serial rights are a very important part of literary property, especially as the short story is so much in vogue.

Serial rights may be divided as follows:—

These are the common forms.

1. Rights in some important London magazine or paper.
2. Rights in some important American magazine or paper.
3. Secondary rights in England.
4. Secondary rights in America.
5. Rights in the Colonies and Dependencies of Great Britain.

In selling any of these rights, the author should be very careful of what he is selling and of the date of publication.

It is best when writing to an editor to state clearly what is offered, *e.g.*,

"Dear Sir,—I beg to offer you the inclosed for serial publication in '. . . .'" (naming the periodical).

If the tale is accepted without any further special stipulations, then it is accepted on the terms of the letter. N.B.—Keep a copy of the letter.

If the author is particular as to price, he should also state the amount per thousand words that he will require.

If the author is careless, he may find that he has sold all serial rights, that his story is being syndicated in the provinces and in America, and is bringing in moneys that he could have put into his own pocket.

He may find, again, that he has brought himself within the toils of the 18th section of the Copyright Act.

The 18th section runs as follows :—

"XVIII. And be it enacted, that when any publisher or other person shall, before or at the time of the passing of this Act, have projected, conducted, and carried on, or shall hereafter project, conduct, and carry on, or be the proprietor of any encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any volume, parts, essays, articles, or portions thereof for publication in or as part of the same, and such work, volumes, parts, essays, articles, or portions shall have been or shall hereafter be composed under such employment, on the terms that the copyright therein shall belong to such proprietor, projector, publisher, or conductor, and paid for by such proprietor, projector, publisher, or conductor, the copyright in every such encyclopædia, review, magazine, periodical work, and work published in a series of books or parts, and in every volume, part, essay, article, and portion so composed and paid for, shall be the property of such proprietor, projector, publisher, or other conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by this Act; except only that in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature after the term of twenty-eight years from the first publication thereof respectively, the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act: Provided

always, that during the term of twenty-eight years the said proprietor, projector, publisher, or conductor, shall not publish any such essay, article, or portion separately or singly, without the consent previously obtained of the author thereof, or his assigns: Provided also, that nothing herein contained shall alter or affect the right of any person who shall have been or who shall be so employed as aforesaid to publish any such his composition in a separate form who by any contract, express or implied, may have reserved or may hereafter reserve to himself such right; but every author reserving, retaining, or having such right shall be entitled to the copyright in such composition when published in a separate form, according to this Act, without prejudice to the right of such proprietor, projector, publisher, or conductor, as aforesaid."

It will be seen from this that when the proprietor employs and pays (a most important feature) a writer on the terms that the copyright in the work done shall belong to such proprietor, then the proprietor can for twenty-eight years republish the work, but only with the consent of the author, but that the author may on the other hand expressly or impliedly retain his copyright.

The question what would happen if nothing was said about copyright is left open.

Does the author impliedly reserve it?

One case decided in the courts seems to point to this view, but the question is still by good authorities considered doubtful.

If the author can sell both the American and English serial rights he must arrange for simultaneous publication so as not to lose the American copyright.

There are certain periodicals that publish long stories in single numbers. This is often the case with annuals.

The author when selling to such periodicals should keep this point before him, as it is possible that such circulation may damage the book rights, and if this is likely he should secure an enhanced price.

The author should never sign a receipt for moneys in payment for serial use which is so expressed as to convey the copyright to the proprietor.

If an author does not understand what he is signing he had better take the advice of some one who does.

He should be careful of the date of publication, for the very simple reason that the tale will be published in book form, and it cannot appear in this form until it has run at any rate for some months as a serial.

It is important for an author to arrange that the publication of one story does not conflict with the publication of another.

There is the further question that many periodicals do not pay until publication takes place. This, of course, could not be delayed indefinitely, but the expense and difficulty of bringing the machinery of the law to work ought, if possible, to be avoided. Let the contract be quite clear by taking a little care in the beginning.

Authors should be careful also that their MS. is sent type-written. If type-writing is too expensive, then the writing should be very distinct.

There is no doubt, however, that a type-written MS. increases an author's chance of being read, and he should not neglect this chance.

The author should always retain a copy in case of accidents, and should be very careful of the position and repute of the periodical he intends to deal with.

G. H. THRING, Secretary of the
Incorporated Society of Authors.

Postscriptum.

As one result of exposing certain facts in regard to agreements, a publisher who was referred to in these columns has so far modified his offers concerning agency business that he now proposes to give the author 90 per cent. instead of 50, his former custom. In other words, he proposes to be a literary agent in such matters in the same sense as the genuine literary agent. But the literary agent must always stand apart from the publisher.

In my opinion it is a great mistake for the author to look to the publisher for agency work.

G. H. Thring, Secretary of the
Incorporated Society of Authors.

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